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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/495,556	02/01/2000	Eric H. Kuhrt		5012

7590 07/30/2002

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EXAMINER
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DI NOLA BARON, LILIANA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 07/30/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/495,556

Applicant(s)

KUHORTS, ERIC H.

Examiner

JYOTHSNA A VENKAT

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 51-106 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The name of the examiner of this application has changed from DiNola Baron Liliana to Jyothsna Venkat.

Receipt is acknowledged of Amendment C, conditional notice of appeal, and substitute power of attorney filed on 6/24/02. Claim 106 has been added as per applicant's amendment dated 6/24/02. Claims 51-106 are pending in the application and the status of the application is as follows:

#### *Claim Rejections - 35 USC § 112*

2. Claims 51-64, 73-75, 79, and 80-106 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. ***This is a new matter rejection.***

3. There is no support in the instant specification for the following:

A. **“ With the proviso that no classification step is performed during the micro encapsulation process” (claims 61-64).**

B. The range of the oil is “ of about 3-50% or 3-20% or 3-10%”(claims 58-60, 73-75, 87-89, and 99-101. Applicant's attention is drawn to the original claims where the range is from 5-30%. The expression “ about reads on 2.99 or 2.98 for which there is no support.

Art Unit: 1615

C. There is no support in the specification for the **ranges of sugar or oil** in claims 62, 64, 77, 79, 91, 93, 103 and 105.

D. There is no support in the specification for the “**mixer input ranging from 600RPM to 2000 RPM**”(claims 80-93).

E. There is no support in the specification for any **oil having the maximum iodine value of 5.0**. The support is for “soy oil” at page 6, last paragraph (claim 94).

F. There is no support in the specification for the newly added claim 106 for the expression “**with the proviso that no grinding sorting, or separation step is performed**”.

In accordance with MPEP 714.02 applicants should **specifically point out support** for any amendments made to the disclosure.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claim 51, 57, 68, 70, 72, 82, 84, 86, 96, and 98 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The following reasons apply:

7. A. Clarification is requested for “classification step”. What procedures are included in this classification step?

Art Unit: 1615

8. B. Claims 57, 72, 86 and 98 are unclear as to applicant's intent. There is only one oil and the expression " comprises " includes other components. Amendment to " is, " suggested.

9. C. Clarification is requested for " mixer work input" in claim 68.

10. D. Claims 70, 84 and 96 are in the improper Markush group format. Amendment of " comprises " to " is " is suggested.

***Claim Rejections - 35 USC § 103***

11. Claims 51-106 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Mandris et al., U. S. Patent 6,048,562('562) and Chaundy et al., U. S. Patent 5,756,719('719).

12. There is no support in the specification for the " proviso " in claims 51 and 106 and bases upon this assumption the claims are rejected over the references.

13. The instant application is claiming micro encapsulation process comprising " adding a core material and an oil, mixing them together so that microencapsulated particles are formed and discharging the micro particles. The dependent claims adding sugar or mineral to this process.

14. Patent '562 teaches encapsulation process using a core material and fatty phase. See col.3, lines 20-557. The fat phase can be soybean oil. Applicants use the same oil. See also the examples. The patent does not disclose the addition of sugar or mineral oil.

Patent '719 teaches compositions useful for micro encapsulation using the core material and oil, and also teaches the addition of various optional ingredients, which includes sugar or mineral. See col.1, lines 10-17, and cols. 3-4 see especially col.4, lines 45-52 for the ranges of

Art Unit: 1615

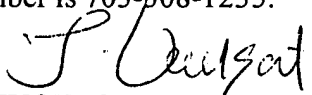
the oils, see the paragraph bridging cols. 4-7, for the active ingredient and see cols.7-8 for the sugars or mineral. See especially col.8, lines 7-9, and line16 and lines 29-30 for the ranges.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare micro encapsulation using the process of '562 and use the sugar or mineral in the micro encapsulation process, which are conventional optional ingredients. Because of the teachings of patent'562 that by raising the temperature of the system above the fat melting point the spherical capsules can be separated from the fat phase, one of ordinary skill in the art would have reasonable expectation that the instant process would be successful. The expression " comprising " in the claims is inclusive of all the unrecited ingredients in major amounts. This is a prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT whose telephone number is 703-308-2439. The examiner can normally be reached on M-F, 9:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
JYOTHSNA A VENKAT  
Primary Examiner  
Art Unit 1615